

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant : Katrin COUNRADI et al.

Confirmation No. 4896

Group Art Unit: 1796

Appl. No. : 10/573,323

Examiner: Mruk, Brian P

I. A. Filed : September 23, 2004

For : FOAMING PREPARATION WITH A YIELD POINT

REPLY BRIEF UNDER 37 C.F.R. § 41.41(a)(1)

Commissioner for Patents
U.S. Patent and Trademark Office
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Alexandria, VA 22314

Sir:

This Reply Brief is in response to the Examiner's Answer mailed May 20, 2010, the period for reply extending until July 20, 2010.

In the Examiner's Answer all grounds of rejection set forth in the final rejection are maintained.

Appellants note that the Examiner's Answer does not sufficiently address several of Appellants' arguments as to why the rejections are without merit, and misrepresents some of the facts. These deficiencies have prompted the present Reply Brief.

Appellants also note that this Reply Brief is being filed under 37 C.F.R. § 41.41(a)(1) and is directed to the arguments presented in the Examiner's Answer, and therefore must be entered unless the final rejection is withdrawn in response to the instant Reply Brief.

In order to avoid repetition, the following response to the Examiner's arguments in the Examiner's Answer will be limited to issues which are important enough to warrant a further comment in Appellants' opinion. Accordingly, Appellants' silence with respect to

any allegations set forth in the Examiner's Answer which are not specifically addressed below should by no means be construed as Appellants' admission that these allegations are of any merit.

REPLY

1. As an initial matter, it is noted that at page 5 of the Examiner's Answer the Examiner refers several times to "the English Translation of Dubowoj, DE 19937813". This translation has never been made of record (and neither is it listed on the Form PTO-892 attached to the Examiner's Answer, which Form lists yet another document that the Examiner is relying on for the first time in the Examiner's Answer). In view thereof, Appellants can only assume that "the English Translation of Dubowoj, DE 19937813" is the foreign reference document which has a mail room date of May 10, 2010 in the Image File Wrapper of PAIR, i.e., the machine translation of DE10037813 provided by the European Patent Office.

2. Regarding the detailed arguments set forth in the Appeal Brief as to why the appealed rejections are without merit, Appellants note that the Examiner's response to these arguments in the Examiner's Answer spans only slightly more than one page (pages 5 and 6).

3. It is noted that the Examiner disagrees with Appellants' argument that Dubowoj, DE 19937813 (hereafter "DUBOWOJ") does not teach or suggest in general a gel-forming acrylate copolymer thickener that is cross-linked and alkali swellable. Specifically, the Examiner "asserts that Example 1 of Dubowoj clearly discloses a

composition that contains an Ethylacrylate/Diethylaminoethylmethacrylate/C₁₀₋₂₀-alkyl-PEG-20 itaconate Terpolymer” and further asserts that DUBOWOJ “clearly discloses their composition is gel forming... that the Ethylacrylate/Diethylaminoethylmethacrylate/C₁₀₋₂₀-alkyl-PEG-20 itaconate Terpolymer contains polyunsaturated monomers that crosslink (i.e. thickens and form a gel), and that the attached Product Literature AkzoNobel, ‘STRUCTURE PLUS Product Overview’ discloses that an Ethylacrylate/Diethylaminoethylmethacrylate/C₁₀₋₂₀-alkyl-PEG-20 itaconate Terpolymer forms a thick gel, is acid swellable in the presence of cationic ingredients, and that the terpolymer thickens in the neutral region”.

4. Appellants respectfully submit that most of the Examiner’s assertions set forth above are clearly not correct and/or not supported by any evidence whatsoever.

In particular, regarding the Examiner’s assertion that the ethylacrylate/diethylaminoethylmethacrylate/C₁₀₋₂₀-alkyl-PEG-20 itaconate terpolymer employed in Example 1 of DUBOWOJ contains polyunsaturated monomers that crosslink, Appellants note that the Examiner has failed to identify any of the one or more allegedly polyunsaturated monomers among the three different monomers on which the ethylacrylate/diethylaminoethylmethacrylate/C₁₀₋₂₀-alkyl-PEG-20 itaconate terpolymer is based, i.e., the monomer(s) which contain(s) more than one polymerizable unsaturated (e.g., double) bond. Appellants submit that it is evident that neither ethylacrylate nor diethylaminoethylmethacrylate nor C₁₀₋₂₀-alkyl-PEG-20 itaconate contains more than one polymerizable double bond, and neither has the Examiner provided any evidence to the contrary. Accordingly, it is not seen that the

ethylacrylate/diethylaminoethylmethacrylate/C₁₀₋₂₀-alkyl-PEG-20 itaconate terpolymer employed in Example 1 of DUBOWOJ (or any of the other terpolymers employed in the Examples of DUBOWOJ) is capable of being cross-linked (as recited in the instant independent claims).

5. The Examiner's assertion that the "STRUCTURE PLUS Product Overview" brochure "discloses that an Ethylacrylate/Diethylaminoethylmethacrylate/C₁₀₋₂₀-alkyl-PEG-20 itaconate Terpolymer forms a thick gel, is acid swellable in the presence of cationic ingredients, and that the terpolymer thickens in the neutral region" is substantially correct with the exception that the brochure states that the terpolymer forms gels "even in the presence of cationic ingredients".

6. Appellants do not dispute the fact that the "STRUCTURE PLUS Product Overview" brochure states that the terpolymer is acid-swellable. Appellants further note that the brochure also states that the terpolymer is "[d]esigned to thicken and stabilize formulations in the low pH range" and that "[t]he use of surfactants will enhance its performance in the acid region." However, it is pointed out that all of the independent claims 41, 53 and 65 recite, *inter alia*, that the claimed cosmetic or dermatological cleansing preparation comprises component (c), i.e., one or more gel-forming acrylate thickeners selected from cross-linked, alkali-swellable acrylate copolymers. In other words, the acid-swellable terpolymer of DUBOWOJ relied on by the Examiner apparently is completely different from the cross-linked, alkali-swellable acrylate copolymers recited in the instant claims.

7. Appellants could not find support in the “the English Translation of Dubowoj, DE 19937813” for the Examiner’s assertion that DUBOWOJ “clearly discloses a composition that has a pH up to 8.5”. At any rate, an inspection of the Examples of DUBOWOJ (original German document) shows that the pH of the exemplified compositions is 6.0 (Example 1, page 6, line 22), 6.0 (Example 2, page 6, line 52), 6.0 (Example 3, page 7, line 17), 5.6 (Example 4, page 7, line 44) and 5.5 (Example 5, page 8, line 11). In other words, the pH of all of the exemplified compositions of DUBOWOJ is in the acidic range, consistent with the fact that the terpolymer employed in Example 1 (and most likely also the related terpolymers employed in the remaining Examples) are acid-swellable.

CONCLUSION

The request to reverse the rejection of claims 41-71 and to return the application to the Examining Group for prompt allowance is respectfully maintained.

Although no fee is believed to be required for entry of this Reply Brief, the Patent and Trademark Office is hereby authorized to charge any fee that is deemed to be necessary to Deposit Account No. 19-0089.

Respectfully submitted,
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